

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2019-030-00251R

Parcel No. 06-12-426-005

**Kirk C. Johnson (OkobojiMelMack Company, LLC),**

Appellant,

vs.

**Dickinson County Board of Review,**

Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on December 2, 2019. Kirk C. Johnson, co-member and co-manager of the Okoboji MelMack Company LLC, was self-represented. Chief Deputy Assessor Jill Bergeson represented the Dickinson County Board of Review.

The Okoboji MelMack Company LLC owns a residential property located at 6009 Lakeshore Drive, Okoboji, Iowa. The subject's 2019 assessment was set at \$1,035,500, allocated as \$777,300 in land value and \$258,200 in dwelling value. (Ex. A).

Kirk Johnson petitioned the Board of Review asserting claims of inequity and error, but attached a statement essentially asserting the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2) (2019). The Board of Review denied the petition. (Ex. B).

Johnson then appealed to PAAB reasserting his claim. § 441.37(1)(a)(2).

## **General Principles of Assessment Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-71.126.2(2-4). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

## **Findings of Fact**

The subject property is two-story home built in 2011 with 50 feet of frontage on West Lake Okoboji. The home has 2352 square feet of gross living area, a crawl space basement, a porch, a wood deck, a concrete patio, and a detached garage. It is listed as high-quality construction (2+00 grade) in normal condition. (Ex. A).

Kirk Johnson asserts the assessed value of the subject should be lowered due to a catastrophic tree loss in the last few years that he contends has caused a substantial decrease in market value. Kirk testified the subject property once had as many as eleven trees but after a storm in 2012 and again a couple of years ago, only two trees remain. Dr. Craig Johnson also testified. He noted some trees were lost to disease. Dr. Johnson testified one tree was put in by a family member two years ago at no cost to the LLC. Insurance coverage was available to cover the cost of removal of the downed trees from the home. The LLC provided no information about whether it ever made any casualty loss claim.

Kirk stated the subject property and its immediate neighboring property are the only properties in the area with very few trees. Kirk submitted photographs of the

subject property depicting the site before trees were lost, with downed trees, and after the trees were removed. (Exs. 3-8). The photograph of the downed trees indicates that most had been on the street side of the home. (Exs. 5 & 8). Large trees still remain on the lake side of the home. (Exs. 6 & 7).

Kirk described the lost trees as eight old-growth trees which provided cooling shade and aesthetic enhancement to the subject property. A lawyer by trade, he submitted court decisions that he contends support a calculation of each tree's value. (Ex. 2). He looked to the case of *Murray v. C.I.R.*, 21 T.C.M. (CCH) 7, 1962 WL 513 (U.S. Tax Ct. Jan. 4, 1962), which involved a review of the IRS Commissioner's disallowance of casualty loss deductions for storm damage to the Murray's trees on their Lake Erie property. Kirk contends in that case, the tax court "determined that a fair multiplier for tree loss would be \$100 per inch of lost tree diameter." (Ex. 2). Kirk contends the "fair multiplier today would be \$1000 per inch" of eight lost trees each with an average diameter of 29.45 inches. We note there is no corroborative evidence the average tree diameter was 29.45 inches or that the rate of inflation would result in a \$1000 per inch multiplier. Regardless, using this theory he arrives at a total loss of value of \$235,600.<sup>1</sup> Kirk then subtracted this amount from the 2019 assessment and asserts the accurate market value of the subject property is \$799,900. Kirk conceded no appraisal of the subject property was performed either before or after the tree losses. Neither Kirk nor Dr. Johnson professed any expertise in valuing trees and only one of the lost trees had been replaced at no cost.

The Board of Review submitted Declarations of Value (DOV) and aerial photographs of six recently sold West Lake Okoboji and Spirit Lake properties. (Ex. D-F). PAAB took judicial notice of the publically accessible property record cards for these properties. (Exs I-N). The comparables are summarized in the following table.

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<sup>1</sup> We note this amount is almost equal to the assessed value of the subject's dwelling of \$258,200.

Comparable	Lake front footage	Year Built	Gross Living Area (SF)	# Trees (estimated)	Dwelling Value	Land Value	Total Assessed Value (AV)	2018 Sales Price
Subject	50	2011	2352	2	\$258,200	\$777,300	\$1,035,500	NA
1 –5905 Lakeshore	50	1993	1656	2-4	\$277,100	\$849,900	\$1,127,000	\$1,299,000
2 –6405 Lakeshore	50	1910	1218	4-8	\$103,900	\$856,800	\$960,700	\$985,000
3 –15127 215th Ave	50	2007	2295	2-3	\$615,600	\$748,800	\$1,364,400	\$1,460,000
4 – 15131 215th Ave	50	1956	1356	1-2	\$159,800	\$748,800	\$908,600	\$912,750
5 – 16412 Bayside	35	2000	1060	4-5	\$425,500	\$462,900	\$888,400	\$907,500
6-16420 Bayside	70	1967	1800	3-5	\$248,600	\$925,600	\$1,174,200	\$1,185,000

The aerial photographs show a varying number of trees on the above properties. Comparable 4 has fewer trees than the subject and Comparables 1 and 3 appear to have similar tree counts as the subject.

Kirk was critical of the comparables noting all had more trees than his property. All of the properties are older than the subject and have less gross living area. He also asserted some had more lake frontage or beach access. Comparables 5 and 6 also enjoy a golf course nearby. Kirk was familiar with Comparable 6 which had belonged to his uncle. He stated it had been extensively remodeled, had more lake frontage, and many trees.

All of the comparables are assessed at or below their 2018 sale prices. We question the comparability of the properties' dwellings to the subject, but recognize they are offered to demonstrate similar tree coverage and similar land valuations.

The Board of Review asserted there is no precedent for considering tree loss in the valuation of real estate for taxation purposes. (Ex. G). They note the claim points to a property condition issue that may or may not affect its market value and Johnson has not shown that the condition has impacted the assessment.

## **Analysis & Conclusions of Law**

Johnson contends the subject property is over assessed as provided under Iowa Code section 441.37(1)(a)(2).

Although there is no presumption the assessed value is correct, Johnson bears the burden of proving his claims by a preponderance of the evidence. §§ 441.21(3), 441.37A(3)(a); *Compiano*, 771 N.W.2d at 396-97 (Iowa 2009) (citations omitted).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(b). Market value essentially is defined as the value established in an arm's length sale of the property. *Id.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594,597 (Iowa 1990). "Sale prices of the property or comparable properties in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value." § 441.21(1)(b).

This case grows out of the loss of trees from storms and diseases on Johnson's property. As a result, Johnson believes his property assessment should be reduced by \$235,000. This figure is not supported by a valuation methodology recognized under section 441.21, but is based on a methodology he believes is consistent with court decisions involving casualty losses of trees for income tax purposes. The cases Johnson cites, however, do not support his position.

In *Edwards v. C.I.R.*, the Court stated the amount of casualty loss cannot be measured by "the value of any particular part of the whole unit affected by the casualty, such as . . . individual trees which have been destroyed." 19 T.C.M. (CCH) 925, 1960 WL 918 (U.S. Tax Ct. Aug. 31, 1960). Rather, the casualty loss is measured by the difference in fair market value before and after the casualty incident. *Id.* Johnson has offered no evidence of his property's market value prior to and after the loss of the trees. Further, the language in *Edwards* repudiates the methodology Johnson is attempting to apply here.

In addition, we note Johnson's analysis of the *Murray* case is inaccurate. The *Murray* Court did not adopt a \$100 per inch of diameter of tree loss method. If it had, the Murrys' loss would have amounted to \$26,400; not the \$13,200 determined to be the value of trees destroyed. *Murray v. C.I.R.*, 21 T.C.M. (CCH) 7, 1962 WL 513 (U.S. Tax

Ct. Jan. 4, 1962). In actuality, it appears the Murrays offered evidence of the property's diminution in value as a result of the tree loss; something Johnson has not done here. *Id.* Moreover, his assignment of \$1,000 per inch of lost tree diameter is unsupported and arbitrary.

Iowa courts have decided cases requiring a determination of damages for tree loss. In *Laube v. Estate of Thomas*, 376 N.W.2d 108, 109 (1985), the Iowa Supreme Court recognized “[i]t is impossible to state a simple, all-purpose measure of recovery for loss of trees. Because of the wide variety in their uses the law has devised a number of alternative measures, to be applied according to the location and use of the loss of trees.” The *Laube* Court then summarized the alternative measures.<sup>2</sup> *Id.* It stated that where the trees were put to shade or ornamental use (as opposed to commercial use), the measure of recovery for their loss is the difference in value of the realty before and after their destruction. *Id.* (citing *Walters v Iowa Elec. Co.*, 212 N.W. 884, 886 (Iowa 1927) (the measure of recovery on account of injury to the trees or grove is the difference between the market value of the farm as it was before the trees were destroyed and its market value after.)). See also *Edwards*, 19 T.C.M. (CCH) at 926 (“the entire property is considered as a unit (land, improvements, and trees), and the loss is measured by the decrease, if any, in the fair market value of the entire property”). The Iowa Supreme Court has also recognized a modified version of damages where the trees had intrinsic value specific to the owner. *Bangert v. Osceola County*, 456 N.W.2d 183 (1990).

Although the loss of trees could have an impact the subject property's value, Johnson failed to offer reliable evidence of what, if any, that impact is in this case. Johnson's opinion of the value of his lost trees is not only unsupported, it is not evidence of the fair market value of the subject property as a whole.

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<sup>2</sup> PAAB has not found any reported Iowa cases involving a claim that a loss of trees should result in a reduction to a property assessment. Nor does it appear the cited Iowa tree loss cases have ever been applied to an assessment appeal.

To the extent it is necessary to make such a conclusion in this case, PAAB would find the special purpose measure would be most appropriate here and is most consistent with the valuation methodology in section 441.21. Regardless of which measure is used, Johnson has not provided sufficient factual evidence in support of a reduction of his property's value under any of the damage measures described in *Laube*.

The subject property did not recently sell and Johnson offered no credible evidence to support that his property is assessed for more than its market value. This is typically supported by comparable sales that are properly adjusted for differences between them and the subject or a professional appraisal or Comparative Market Analysis (CMA).

Though Johnson contests their comparability, the Board of Review is the only party that offered comparable sales data in this case. Even if we eliminate Comparables 5 and 6 due to differences in lake frontage and location, the remaining sales support the subject's total assessed value.

Viewing the record as a whole, we find Johnson has failed to show his property is over assessed.

### **Order**

PAAB HEREBY AFFIRMS the Dickinson County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.


Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code sections 441.37B and Chapter 17A.19 (2019).



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Dennis Loll, Board Member



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Elizabeth Goodman, Board Member



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Karen Oberman, Board Member

Copies to:

Kirk C. Johnson by eFile

Dickinson County Board of Review by eFile